

February 22, 2012

VIA ELECTRONIC FILING

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**Re: Application of Duke Energy Carolinas and Progress Energy Carolinas to
Engage in a Business Combination Transaction
Docket No. 2011-158-E**

Dear Ms. Boyd:

For the information of the Commission and the parties to this docket we are filing a copy of the Advance Notice of Filing of Proposed Mitigation Plan of Duke Energy Carolinas, LLC and Progress Energy Carolinas, Inc. filed today in the North Carolina Utilities Commission Docket No. E-7, Sub 995. The document describes the proposed Revised Mitigation Plan that the companies plan to file with the Federal Energy Regulatory Commission. By copy of this letter we are serving it on the parties of record and the South Carolina Office of Regulatory Staff. If you have any questions, please have someone on your staff contact me.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.



Frank R. Ellerbe, III

/fre
Enclosure

cc/enc: Kodwo Ghartey-Tagoe, Vice President Legal, State Regulation (via email)
Len Anthony, General Counsel (via email)
Parties of Record (via email & U.S. Mail)

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-7, SUB 995

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	DUKE ENERGY CAROLINAS, LLC'S
Duke Energy Carolinas, LLC's Advance)	AND PROGRESS ENERGY
Notice of Filing of Proposed Mitigation Plan at)	CAROLINAS, INC.'S ADVANCE
the Federal Energy Regulatory Commission)	NOTICE PURSUANT TO
)	REGULATORY CONDITION NO. 10

Pursuant to Commission Rule R1-5 and Regulatory Condition Nos. 10 and 59 of the North Carolina Utilities Commission's ("Commission") March 24, 2006 *Order Approving Merger Subject to Regulatory Conditions and Code of Conduct* in Docket No. E-7, Sub 795, Duke Energy Carolinas, LLC ("DEC"), hereby provides advance notice of a proposed filing with the Federal Energy Regulatory Commission ("FERC") responding to FERC's *Order Rejecting Compliance Filing*, issued December 14, 2011.¹ Duke Energy Corporation ("Duke"), Progress Energy, Inc. ("Progress"), DEC, and Progress Energy Carolinas, Inc. ("PEC") (collectively, "the Applicants"), are prepared to file a Revised Mitigation Plan with FERC upon this Commission granting them permission to do so. Additionally, DEC and PEC plan to resubmit, unchanged, the Joint Dispatch Agreement and the Joint Open Access Transmission Tariff with FERC in Docket Nos. ER11-3306-000 and ER11-3307-000 respectively, at the same time they submit the Revised Mitigation Plan. The filing of the Revised Mitigation Plan and the resubmission of the Joint Dispatch Agreement and the Joint

¹ Regulatory Condition No. 10 provides: "Duke Power, Duke Energy Corporation, the other Affiliates, and the Nonpublic Utility Operations shall file notice with the Commission 30 days prior to filing with the FERC any agreement, tariff, or other document or any proposed amendments, modifications, or supplements to any such document having the potential to (a) affect Duke Power's cost of service for its pre-merger system power supply resources or transmission system; (b) be interpreted as involving Duke Power in joint planning, coordination or operation of generation or transmission facilities with one or more Affiliates; or (c) otherwise affect Duke Power's rates or service. The advance notice provisions of Regulatory Condition No. 59(b) apply; provided, however, that, to the extent the filing with the FERC is not to be made by Duke Power, the advance notice procedures shall be for the purpose of a Commission determination as to whether the filing is reasonably likely to have an Effect on Duke Power's Rates or Service."

Open Access Transmission Tariff in no way put the Commission's jurisdiction over Docket Nos. E-7, Sub 986 and E-2, Sub 998 (collectively "the Merger Dockets") at risk of preemption. Because of the effect of this filing on the Merger as well as PEC's participation in the Revised Mitigation Plan, the Joint Dispatch Agreement and the Joint Open Access Transmission Tariff, PEC joins in this filing.

In connection with this advance notice pursuant to Regulatory Condition Nos. 10 and 59, DEC and PEC state as follows:

1. On April 4, 2011, pursuant to G.S. § 62-111(a) and Commission Rule R1-5, Duke and Progress filed a joint application for approval to engage in a business combination transaction and address the regulatory conditions and codes of conduct in the Merger Dockets.

2. At the same time, pursuant to sections 203(a)(1) and 203(a)(2) of the Federal Power Act and Part 33 of FERC's regulations, the Applicants filed with FERC in Docket No. EC 11-60-000 an application for the approval of a transaction pursuant to which Progress will become a wholly-owned subsidiary of Duke and the former shareholders of Progress will become the shareholders of Duke. As part of the merger, DEC and PEC filed their proposed Joint Dispatch Agreement and their Joint Open Access Transmission Tariff for approval with the FERC in Docket Nos. ER11-3306-000 and ER11-3307-000, respectively.

3. On September 2, 2011, the Public Staff of the North Carolina Utilities Commission (the "Public Staff") filed the Agreement and Stipulation of Settlement ("Settlement") between Duke, DEC, Progress, PEC, and the Public Staff, resolving outstanding issues and supporting the proposed merger in the Merger Dockets. The Settlement provided that the Merger Dockets would remain open until the FERC issues its orders in the three pending merger related FERC dockets referenced above. DEC and PEC

further agreed that the parties will have an opportunity to analyze FERC's order(s) and present positions as to whether or not such order(s) would alter the benefits and risks associated with the merger and whether further conditions and other actions were needed.

4. On September 20-22, 2011, the hearing in the Merger Dockets took place before the Commission. Proposed orders, briefs, or both by the parties to the Merger Dockets were filed on November 23, 2011.

5. On September 30, 2011, FERC issued its *Order on Disposition of Jurisdictional Facilities and Merger* in Docket No. EC11-60-000 ("FERC's Merger Order"), in which it conditionally authorized the proposed merger subject to its subsequent approval of market mitigation measures to be proposed by the Applicants. These measures' purpose would be to mitigate the effects of the merger in concentrating wholesale power markets in both the DEC balancing authority area ("BAA") and the PEC East BAA. FERC's Merger Order provided that the Applicants' mitigation measures could include, but were not limited to, the following: (1) membership in a Regional Transmission Organization; (2) implementation of an independent coordinator of transmission arrangement; (3) generation divestiture; (4) virtual divestiture; and (5) transmission upgrades.

6. On October 7, 2011, DEC filed in Docket No. E-7, Sub 995 a Motion to Waive the 30 day advance notice period required by Regulatory Condition No. 10 for the mitigation plan that the Applicants proposed to file with FERC ("Initial Mitigation Plan"). In that Motion, DEC described the Initial Mitigation Plan. DEC also noted that waiving the 30 day notice period would neither adversely affect the Commission's jurisdiction over the merger nor would it prejudice the Commission's or any party's ability to review the Initial Mitigation Plan prior to the Commission's issuance of a final order on the Merger.

7. On October 17, 2011, the Commission granted DEC's motion in its *Order Regarding Advance Notice*. In that Order, the Commission waived the 30 day advance notice requirement, which permitted the Applicants to file the Initial Mitigation Plan that same day. The Commission also noted that the waiver did not constitute a ruling on the merits of the Initial Mitigation Plan and did not prejudice any party's right to review the Initial Mitigation Plan or to raise relevant issues associated with it in the context of the Merger Dockets.

8. On October 17, 2011, the Applicants filed the Initial Mitigation Plan with FERC to address the market mitigation issues identified in FERC's September 30th order. The Initial Mitigation Plan proposed virtual divestiture, which does not involve the sale or divestiture of hard assets. Rather, virtual divestiture involves offering to sell generation into the market to address market power concerns.

9. Under the Applicants' Initial Mitigation Plan, DEC and PEC offered to sell generation on a day-ahead basis to entities ultimately serving load within the PEC East BAA and the DEC BAA. The offers applied in PEC's East BAA in the summer season and in DEC's BAA in both the summer and winter seasons. DEC and PEC would make this offer of energy only when sufficient generation resources were available for them to first serve their retail and wholesale native load firm customers, including operating reserves.

10. On December 14, 2011, FERC issued its *Order Rejecting Compliance Filing*, in which it found that the Initial Mitigation Plan did not adequately address the concerns identified in FERC's earlier order. FERC observed, among other things, that the short-term nature of the proposed power sales, coupled with the uncertainty of the availability of the energy, raised doubts as to whether the energy in fact would be sold. Consequently, FERC concluded that there would be no assurance that the Initial Mitigation Plan would address the market concentration issues that FERC had previously identified. FERC, therefore, rejected

the Initial Mitigation Plan, but did so without prejudice to the Applicants' right to file a revised mitigation proposal. Because the Joint Dispatch Agreement and the Joint Open Access Transmission Tariff were predicated on the proposed merger application, the FERC dismissed those filings as moot by Order also dated December 14, 2011, without prejudice to the Applicants re-filing the Joint Dispatch Agreement and the Joint Open Access Transmission Tariff.

11. The Applicants' have developed the Revised Mitigation Plan, which they intend to file with FERC. As explained more fully below, the Revised Mitigation Plan consists of two phases – an Interim Mitigation that consists of virtual divestiture and a Permanent Mitigation that consists of certain transmission improvements and certain other commitments.

12. The Interim Mitigation portion of the Revised Mitigation Plan will consist of firm power sales by DEC and PEC in the following amounts:

- DEC
 - Summer Peak – 150 MW
 - Summer Off Peak – 300 MW
 - Winter Peak – 25 MW
 - Winter Off Peak – 225 MW
- PEC
 - Summer Peak – 325 MW
 - Summer Off Peak – 500 MW

The energy will be priced based on fixed heat rates multiplied by a published gas index. The heat rates were determined based on the energy prices required to resolve the market mitigation issues identified by FERC and approximate the heat rates for gas-fired combined cycle generation for the off peak periods and simple cycle combustion turbines for the on

peak periods. The capacity pricing will be established by negotiation with counterparties. The power will be sold on a firm basis, backed by liquidated damages. The Applicants intend to sell the power on a must take basis. The terms and conditions of these sales are set forth in the term sheets attached hereto as Exhibit A.² The Applicants will plan for these obligations in their Integrated Resource Plans over the Phase 1 mitigation period because these sales are firm.

13. The Applicants are in the process of negotiating with various counterparties for the sale of the power described above and intend to file finalized power sales agreements with FERC as part of the Revised Mitigation Plan.³ These power sales agreements are intended to be in place only until permanent mitigation measures (i.e., the transmission upgrades that comprise the Permanent Mitigation portion of the Revised Mitigation Plan) are completed. The Applicants currently estimate that period to be approximately three years. In the event that the initial firm sales expire before the permanent mitigation measures are in place, the Applicants will either renew their existing power sales agreements or enter into new agreements with new buyers under materially the same terms and conditions. Any such sales to alternative buyers will be a “bridge” to continue the mitigation power sales until the permanent mitigation measures are completed. To achieve that goal, the sales will be limited to the purchasers under the original agreements or other buyers who have little or no presence in the wholesale power markets in DEC’s and PEC’s service territories. This will ensure that the additional sales will have the same beneficial effect on market concentration as the negotiated mitigation sales. Further, the new agreements will be structured to sell the

² Because the negotiations are ongoing with potential counterparties, the terms and conditions of the mitigation sales may vary from those set forth in Exhibit A. However, the essential terms of the mitigation sales (e.g., the volume, the time periods, the energy rate, and the firmness) will not change.

³ The effectiveness of all such power sales agreement shall be conditioned on the closing of the merger of the Applicants.

same amount of power for the same seasonal periods as the mitigation sales.⁴ The power sold will be offered at the same energy price and firmness as the power sold through the negotiated mitigation sales. These measures will make certain that the additional sales, if needed, will resolve the market concentration issues in the same manner as the initial mitigation sales.

14. As to the Permanent Mitigation portion of the Revised Mitigation Plan, the Applicants will propose the following three (3) transmission projects: 1) upgrading the transformers on DEC's Antioch 500/230 kv transmission line; 2) constructing a third 230 kv line along PEC's existing Lilesville to Rockingham 230 kv line; and 3) adding a series reactor to one of PEC's existing Roxboro to East Danville 230 kv lines ("Group 1 Projects"). The Group 1 Projects will also include PEC's commitment to an operating procedure to work in connection with the series reactor on the Roxboro to East Danville 230 kV line. This operating procedure will ensure that PEC's Roxboro and Mayo large coal units are at full output when needed to push power back towards American Electric Power/PJM to force power flow over the stronger tie lines. Because the Group 1 Projects do not require acquisition of a new right of way or a state-issued certificate of environmental compatibility and public convenience and necessity, the Applicants expect that all of these projects can be completed within three years. The Applicants' initial assessments suggest an estimated incremental cost of approximately \$75 million for the Group 1 Projects.

15. The permanent mitigation measures described above will increase the transmission import capability on the DEC and PEC systems. In addition, the projects will increase both systems' Simultaneous Import Limits ("SIL"). A system's SIL is the amount

⁴ In order to ensure that the additional power sales result in the sale of all of the power necessary to resolve the market concentration issues, the Applicants will commit to selling all of the power offered regardless of the price received. Consequently, the capacity prices received in the additional sales auction may be different (and potentially lower than) the capacity prices negotiated under the initial mitigation sale.

of power that can be imported by the system at one time. If the Group 1 Projects are installed, they will remove limiting factors on the Applicants' systems thereby increasing the systems SILs.⁵ Current analysis shows that the Group 1 Projects will increase the SIL values on the Applicants' systems as follows:

- DEC
 - Summer SIL Increase – 2440 MW
 - Winter SIL Increase – 1930 MW
- PEC
 - Summer SIL Increase – 1820 MW

16. By increasing the DEC and PEC SIL values for the Summer and Winter periods, the transmission projects effectively de-concentrate the markets during those periods, thereby offsetting the market concentrating effect of the merger. However, there appear to be minor screen failures that would still exist in the PEC market. The Applicants are evaluating other ways to mitigate the failures through additional transmission projects and a commitment to set aside a portion of the newly created transfer capability from DEC to PEC for use by third parties during the periods for which there are remaining screen failures.⁶ The other transmission projects under evaluation include the following projects: 1) reconductoring the PEC Kinston Dupont – Wommack 230 kV Line; 2) reconductoring the PEC Person - (DVP) Halifax 230 kV Line; 3) installing 4000 amps wave traps and reworking protective relays on the PEC Wake – Carson 500 kV Line; 4) upgrading the PEC Durham - E. Durham 230 kV line; and 5) constructing a new PEC Greenville – Kinston Dupont 230 kV

⁵ The transmission projects will also increase the import transmission capacity that is used to determine OASIS postings for the DEC and PEC systems. For purposes of resolving the market concentration issues identified by FERC, the SIL values are important because the SIL values are lower than the total amount of import capability on the systems' various interfaces. Thus, the SIL values are the limiting factor in determining how much power can be imported by third parties at any given time.

⁶ Because the transmission projects will create 550 MW of new transmission capacity from DEC to PEC during the applicable periods, the Applicants will ensure the set aside amount is available to third parties to use. Applicants will engage an independent monitor to assure Applicants' compliance with this commitment.

Line (these additional five (5) projects are referred to hereafter as the Group 2 Projects).

Similar to the Group 1 Projects, these projects do not require acquisition of a new right of way or a state-issued certificate of environmental compatibility and public convenience and necessity, the Applicants expect that all of these projects can be completed within three years. The Applicants have not yet completed detailed cost estimates for these projects, but the Applicants' initial assessments suggest an estimate of between \$44 million and \$68 million for the Group 2 Projects.⁷ As to a required set aside, if the Permanent Mitigation consists of the Group 1 Projects, there will be a 365 MW transmission set aside during the Summer Off Peak Period and a 305 MW transmission set aside during the Summer On Peak Period. However, if the Permanent Mitigation includes both Group 1 and Group 2 Projects, the Permanent Mitigation will have a greater de-concentrating effect on the PEC market and, as a result the transmission set aside will be limited to 230 MW in the Summer Off Peak Period. In addition to the decrease in the set aside amount, current analysis shows that the Group 1 and Group 2 Projects together will increase the SIL values on the PEC' system as follows:

- PEC
 - Summer SIL Increase – 2237 MW

17. If the Applicants ultimately offer both Group 1 and Group 2 Projects to FERC, they will offer them as two different options: One option consisting of only Group 1 Projects, and a second option consisting of both Group 1 and Group 2 Projects. The reason that the Applicants intend to offer two options is that one of the projects in Group 2 – the Greenville – Kinston Dupont 230 kV transmission line – is already in PEC's long term

⁷ The variation in the cost estimate for the Group 2 Projects is due to the difference in the full cost of the Greenville – Kinston Dupont 230 kV line and an acceleration of the cost. That project is already in PEC's long term plans at a cost of \$24 million, the incremental cost of including the line in the Revised Mitigation Plan is the cost of accelerating the project, which is estimated to be \$4 million.

transmission plans with a projected in-service date of 2017. Applicants nevertheless believe that the acceleration of the project should qualify as a mitigation measure.⁸ However, it is possible that FERC could conclude otherwise. Accordingly, the Applicants are considering offering two mitigation alternatives, one that includes Groups 1 and 2 Projects and one that includes only Group 1.⁹

18. The Revised Mitigation Plan will have no adverse impact on rates or service to native load customers. Both DEC and PEC can accommodate the interim mitigation sales and still maintain reasonable planning target reserves and capacity margins. Neither DEC nor PEC have plans to add generating capacity to accommodate these sales. Moreover, the Applicants commit that they will hold retail native load customers harmless from the costs of the power sales associated with the Revised Mitigation Plan. Further, the mitigation power sales will not adversely affect reliability. Specifically, the energy sold will be firm Liquidated Damages (“firm LD”) energy rather than native load priority energy. The Applicants will be excused from delivery in the event of a force majeure. Additionally, the remedy for unexcused non-delivery is the payment of market-based damages. So, in the unexpected event that the Applicants do not have and cannot acquire enough resources in any hour to serve both their native load and the mitigation sales, the Applicants would be permitted under their power sales contracts to curtail the mitigation sales. If the insufficiency of resources is not due to a force majeure, then Applicants would be liable to the mitigation buyers for market-based damages. Applicants will bear the cost of such damage payments

⁸ Under FERC precedent, a project that already was foreseeable and reasonably certain to be constructed at the time the mitigation plan is submitted may not qualify as a mitigation measure. *See Oklahoma Gas & Electric Co.*, 105 FERC 61,297 at P 32 (2003).

⁹ Without the Greenville – Kinston Dupont line, the remaining projects in Group 2 do not have a sufficient mitigating effect to justify their inclusion in a mitigation plan. Consequently, if the Greenville – Kinston Dupont line is not allowed as mitigation, then the rest of Group 2 would also be removed from the mitigation plan.

thereby holding retail native load customers harmless from the cost of any such damage payments.

19. As to the transmission projects that will make up the Permanent Mitigation, DEC and PEC believe the opportunity to increase import capability through these projects will ultimately increase the availability of lower cost power in the Carolinas thereby benefiting retail customers. Prior to filing the Revised Mitigation Plan with FERC, DEC and PEC intend to hold discussions with the Public Staff in order to reach agreement, if possible, on state ratemaking treatment of issues associated with the Revised Mitigation Plan, such as rate base treatment of the transmission upgrades and capacity and energy cost assignments related to the interim firm product sales, and other merger related issues.¹⁰ If such agreement is reached, it will be filed and addressed in the Merger Dockets. Applicants intend to state in their Revised Mitigation Plan filing with FERC that implementation of the Revised Mitigation Plan and the decision to close on the merger will be subject to receiving acceptable resolution of these state issues.

20. DEC believes that filing the Revised Mitigation Plan with the FERC implicates Regulatory Condition Nos. 10. As noted previously, Regulatory Condition No. 10 provides in pertinent part that DEC shall file notice with the Commission 30 days prior to filing with the FERC any agreement, tariff, or other document, having the potential to (a) affect DEC's cost of service for its system power supply resources or transmission system; (b) be interpreted as involving DEC in joint planning, coordination or operation of generation or transmission facilities with one or more Affiliates; or (c) otherwise affect DEC's rates or service.¹¹

¹⁰ The Applicants intend to hold similar discussion with the South Carolina Office of Regulatory Staff.

¹¹ As noted above, the Applicants do not believe that the Revised Mitigation Plan will adversely affect the rates for or reliability of service to Native Load customers. Nevertheless, under a broad reading of Regulatory Condition No. 10, the mitigation measures include investment in transmission, which could potentially have a

21. The Applicants note that the primary purpose of Regulatory Condition No. 10 is to protect the Commission's jurisdiction from the risk of preemption by the FERC. As was the case with the filing of the Initial Mitigation Plan, the filing of the Revised Mitigation Plan with the FERC does not put the Commission's jurisdiction at risk of preemption because the Commission already has jurisdiction over the Merger Dockets, and the Merger Dockets remain open before the Commission. Because the Merger Dockets will remain open until the FERC issues its orders in the three pending merger related FERC dockets referenced above, all parties to this Commission's Merger Dockets will have an opportunity to analyze FERC's orders and present positions as to whether or not such orders would alter the benefits and risks associated with the proposed merger and whether further conditions and other actions were needed.¹² The Commission and the parties to the Merger Dockets have the opportunity to review the Revised Mitigation Plan prior to the Commission issuing an order in the Merger Dockets. The Commission's jurisdiction over the application pending in the Merger Dockets, therefore, is not affected in any way by the proposed FERC filing. After its review of the Revised Mitigation Plan and the FERC's order on the Revised Mitigation Plan, the Commission may then take whatever action it believes appropriate in the Merger Dockets.

22. The Applicants respectfully request that the Commission accept this Advance Notice so that the Revised Mitigation Plan may be filed upon the expiration of the 30-day notice period as set forth in Regulatory Condition No. 10.

23. Regulatory Condition No. 59(a)(ii) requires DEC to file an advance notice in a new, separate Sub docket. In compliance, DEC has filed this Advance Notice in Docket No,


minor impact on rates if the Commission ultimately allows the investment to be included in rates. Additionally, the mitigation measures could potentially impact DEC's bulk power marketing sales in a minimal way, thereby impacting rates to its retail customers.

¹² The Applicants acknowledge that the revised Mitigation Plan is somewhat more complex than the Initial Mitigation Plan and the Applicants commit to working with all parties to fully explain the implementation of Revised Mitigation Plan. Nevertheless, it is clear that the filing of the Revised Mitigation, like the filing of the Initial Mitigation Plan, has no effect on the Commission's jurisdiction.

E-7, Sub 995, but it intends to serve this motion electronically on all parties to the Merger Dockets pending before the Commission to ensure sufficient notice to all of the parties potentially involved. Additionally, contemporaneously with filing the Revised Mitigation Plan at the FERC, DEC and PEC will make a filing in the Merger Dockets, explaining the impact, if any, that the Revised Mitigation Plan has on the pending merger proceedings before this Commission.

Respectfully submitted this the 22nd day of February, 2012.

DUKE ENERGY CAROLINAS, LLC



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EXHIBIT A

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

NONBINDING DRAFT

This is a confirmation (the "Confirmation") dated _____, 2012, between Duke Energy Carolinas, LLC ("DEC") and _____ ("Buyer") (individually a "Party" and collectively the "Parties"). The Parties agree as follows:

COMMERCIAL TERMS

General:	DEC will sell and deliver, and Buyer will purchase and receive, the Quantity of Capacity and Energy every hour during the Delivery Period.
Product:	Capacity and Firm (LD) Energy, as defined in Schedule P of the EEI Master Agreement. DEC will not use the Capacity sold hereunder to meet its planning or operational reserve requirements. The Energy will be delivered from DEC's generating resources.
Quantity:	150 MW On-Peak (Monday to Friday 0700-2300), Summer (June 1 through August 31) 300 MW Off-Peak (Monday to Sunday 2300-0700 and Saturday and Sunday 0700-2300), Summer 25 MW On-Peak, Winter (December 1 through February 28) 225 MW Off-Peak Winter
Term:	Begins the first day after the date of the closing of the Merger, but not earlier than June 1, 2012 and not later than August 1, 2012 and ends February 28, 201_. Within five Business Days after all regulatory approvals required for the closing of the Merger have been obtained, DEC will give notice to Buyer of the closing date of the Merger. The "Merger" means the merger between Progress Energy, Inc and Duke Energy Corporation which has been conditionally approved by the Federal Energy Regulatory Commission ("FERC") in FERC docket EC11-60.

Delivery Period:	<p>The period beginning at 0000 on the first day after the date of the closing of the Merger, but not earlier than June 1, 2012 and not later than August 1, 2012, and ending at 2400 on August 31, 2012; and the period beginning at 0000 on December 1, 2012 and ending at 2400 on February 28, 2013.</p> <p>[For multi-year agreement, add June 1 through August 31 and December 1 through February 28 for each additional year]</p>
Payment:	Buyer shall pay to DEC the Monthly Capacity Price for the entire Delivery Period and shall pay to DEC the Energy Price for all Energy delivered hereunder.
Monthly Capacity Price:	<p>On-Peak Summer: \$[]/kw-month (fixed)</p> <p>Off-Peak Summer: \$[]/kw-month (fixed)</p> <p>On-Peak Winter: \$[]/kw-month (fixed)</p> <p>Off-Peak Winter: \$[]/kw-month (fixed)</p>
Energy Price:	<p>On-Peak Summer: the product of the On-Peak Summer Heat Rate times the Gas Index</p> <p>Off-Peak Summer: the product of the Off-Peak Summer Heat Rate times the Gas Index</p> <p>On-Peak Winter: the product of the On-Peak Winter Heat Rate times the Gas Index</p> <p>Off-Peak Winter: the product of the Off-Peak Winter Heat Rate times the Gas Index</p>
Gas Index:	Index price for natural gas in MMBtu, as reported in the Platts Publication Gas Daily, under the heading Transco Zone 5
Heat Rates:	<p>On-Peak Summer: 10.0 MMBtu/MWh</p> <p>Off-Peak Summer: 7.0 MMBtu/MWh</p> <p>On-Peak Winter: 8.950 MMBtu/MWh</p> <p>Off-Peak Winter: 7.0 MMBtu/MWh</p>
Delivery Point:	DUK system busbar
Transmission:	Buyer shall obtain transmission service and any Ancillary Services required for transmission of the Energy from the Delivery Point.
Energy Scheduling:	Buyer shall purchase and schedule the full Quantity of Energy during all hours of the Delivery Period unless excused under the terms of this Agreement.

OTHER PROVISIONS

1. Conditions Precedent

(a) It is a condition precedent to the Parties' obligations hereunder that the closing of the Merger occurs by July 31, 2012.

(b) It is a condition precedent to the Parties' obligations hereunder that this Confirmation is accepted by FERC by July 31, 2012 as a DEC rate schedule under the Federal Power Act without modification, suspension, investigation or other condition (including setting this Confirmation, or part thereof, for hearing) unacceptable to DEC. DEC will give notice to the Buyer within two Business Days after this condition has been satisfied.

2. EEI Master Agreement

(a) The transaction described in this Confirmation constitutes a Transaction entered into under and subject to the EEI Master Power Purchase and Sale Agreement between the Parties dated _____, as amended as follows (the "EEI Master Agreement").

(b) As applied to this Confirmation only, Section 1.23 of the EEI Master Agreement is hereby amended so that it reads in its entirety as follows: "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Notwithstanding the foregoing, it shall be a Force Majeure, the performance of Buyer shall be excused, and no damages shall be payable, including any amounts determined pursuant to Article Four, if the transmission is unavailable or interrupted or curtailed for any reason, at anytime, anywhere from the Delivery Point to the Buyer's proposed ultimate sink, regardless of whether transmission, if any, that Buyer is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Buyer is attempting to secure is unavailable, this contingency excuses performance by the Buyer for the duration of the unavailability. If the transmission (whether firm or non-firm) that Buyer has secured from the Delivery Point to the sink is interrupted or curtailed for any reason, this contingency excuses performance by the Buyer for the duration of the interruption or curtailment. The applicability of Force Majeure to the Transaction is governed by the terms of the Product and Related Definitions contained in Schedule P.

(c) As applied to this Confirmation only, Section 1.53 of the EEI Master Agreement is hereby amended so that it reads in its entirety as follows: "'Sales Price' equals zero under all circumstances."

The Parties have executed this Confirmation through their duly authorized representatives on the dates set forth below.

DUKE ENERGY CAROLINAS, LLC

BUYER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

NONBINDING DRAFT

This is a confirmation (the "Confirmation") dated _____, 2012, between Progress Energy Carolinas, Inc. ("PEC") and _____ ("Buyer") (individually a "Party" and collectively the "Parties"). The Parties agree as follows:

COMMERCIAL TERMS

- General:** PEC will sell and deliver, and Buyer will purchase and receive, the Quantity of Capacity and Energy every hour during the Delivery Period.
- Product:** Capacity and Firm (LD) Energy, as defined in Schedule P of the EEI Master Agreement. PEC will not use the Capacity sold hereunder to meet its planning or operational reserve requirements. The Energy will be delivered from PEC's generating resources.
- Quantity:** 325 MW On-Peak (Monday to Friday 0700-2300),
500 MW Off-Peak (Monday to Sunday 2300-0700 and Saturday and Sunday 0700-2300)
- Term:** Begins the first day after the date of the closing of the Merger, but not earlier than June 1, 2012 and not later than August 1, 2012 and ends August 31, 201_. Within five Business Days after all regulatory approvals required for the closing of the Merger have been obtained, PEC will give notice to Buyer of the closing date of the Merger. The "Merger" means the merger between Progress Energy, Inc and Duke Energy Corporation which has been conditionally approved by the Federal Energy Regulatory Commission ("FERC") in FERC docket EC11-60.
- Delivery Period:** The period beginning at 0000 on the first day after the date of the closing of the Merger, but not earlier than June 1, 2012 and not later than August 1, 2012, and ending at 2400 on August 31, 2012.

[For multi-year agreement, add June 1 through August 31 for each additional year]

Payment:	Buyer shall pay to PEC the Monthly Capacity Price for the entire Delivery Period and shall pay to PEC the Energy Price for all Energy delivered hereunder.
Monthly Capacity Price:	On-Peak : \$[]/kw-month (fixed) Off-Peak : \$[]/kw-month (fixed)
Energy Price:	On-Peak: the product of the On-Peak Heat Rate times the Gas Index Off-Peak: the product of the Off-Peak Heat Rate times the Gas Index
Gas Index:	Index price for natural gas in MMBtu, as reported in the Platts Publication Gas Daily, under the heading Transco Zone 5
Heat Rates:	On-Peak: 10.0 MMBtu/MWh Off-Peak: 7.0 MMBtu/MWh
Delivery Point:	CPL system busbar
Transmission:	Buyer shall obtain transmission service and any Ancillary Services required for transmission of the Energy from the Delivery Point.
Energy Scheduling:	Buyer shall purchase and schedule the full Quantity of Energy during all hours of the Delivery Period unless excused under the terms of this Agreement.

OTHER PROVISIONS

1. Conditions Precedent

(a) It is a condition precedent to the Parties' obligations hereunder that the closing of the Merger occurs by July 31, 2012.

(b) It is a condition precedent to the Parties' obligations hereunder that this Confirmation is accepted by FERC by July 31, 2012 as a PEC rate schedule under the Federal Power Act without modification, suspension, investigation or other condition (including setting this Confirmation, or part thereof, for hearing) unacceptable to PEC. PEC will give notice to the Buyer within two Business Days after this condition has been satisfied.

2. EEI Master Agreement

(a) The transaction described in this Confirmation constitutes a Transaction entered into under and subject to the EEI Master Power Purchase and Sale Agreement between the Parties dated _____, as amended as follows (the "EEI Master Agreement").

(b) As applied to this Confirmation only, Section 1.23 of the EEI Master Agreement is hereby amended so that it reads in its entirety as follows: "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Notwithstanding the foregoing, it shall be a Force Majeure, the performance of Buyer shall be excused, and no damages shall be payable, including any amounts determined pursuant to Article Four, if the transmission is unavailable or interrupted or curtailed for any reason, at anytime, anywhere from the Delivery Point to the Buyer's proposed ultimate sink, regardless of whether transmission, if any, that Buyer is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Buyer is attempting to secure is unavailable, this contingency excuses performance by the Buyer for the duration of the unavailability. If the transmission (whether firm or non-firm) that Buyer has secured from the Delivery Point to the sink is interrupted or curtailed for any reason, this contingency excuses performance by the Buyer for the duration of the interruption or curtailment. The applicability of Force Majeure to the Transaction is governed by the terms of the Product and Related Definitions contained in Schedule P.

(c) As applied to this Confirmation only, Section 1.53 of the EEI Master Agreement is hereby amended so that it reads in its entirety as follows: "'Sales Price' equals zero under all circumstances."

3. Entire Agreement

This Confirmation (along with the EEI Master Agreement) constitutes the entire and integrated agreement between the Parties relating to the rates, terms, and conditions set out in this Confirmation. This Confirmation supersedes all prior agreements whether oral or written related to the subject matter of this Confirmation.

The Parties have executed this Confirmation through their duly authorized representatives on the dates set forth below.

PROGRESS ENERGY CAROLINAS, INC. BUYER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____